85-1038

No.

Supreme Court, U.S.
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In The
Supreme Court Of The United States

OCTOBER TERM, 1985

JOHN J. KELLY,
CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL.,
Petitioner,

v.

CAROLYN ROBINSON,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Did the Court of Appeals err in concluding that a criminal restitution order can constitute a dischargeable debt in bankruptcy?

LIST OF ALL PARTIES

In addition to petitioner John J. Kelly, Connecticut Chief State's Attorney, the other petitioners are: Director, Office of Adult Probation; Commissioner, Department of Income Maintenance; and Commissioner, Department of Administrative Services. The sole respondent is Carolyn Robinson.

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OPINION BELOW

The opinion of the United States Bankruptcy Court for the District of Connecticut, which was adopted by the United States District Court for the District of Connecticut, is reported at 45 B.R. 423 (Bankr. D. Conn. 1984), and is reprinted in Appendix A, pages 1A-6A. The bankruptcy and district courts relied heavily on their own opinion in In re Pellegrino, which is reported at 42 B.R. 129 (Bankr. D. Conn. 1984), and is reprinted in Appendix B, pages 7A-27A. The opinion of the United States Court of Appeals for the Second Circuit is not yet officially reported, but is reprinted in Appendix C, pages 28A-54A.

JURISDICTION

The United States Court of Appeals for the Second Circuit rendered its decision on October 29, 1985. No petitions for rehearing or requests for an extension of time within which to file a petition for certiorari were

filed. This Court has jurisdiction to review by writ of certiorari the judgment of the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

A. Provisions of Title 11, United States Code

§ 101. Definitions

In this title-

(4) "claim" means--

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced

to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(11) "debt" means liability on a claim;

§ 105. Power of Court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and

other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3), operates as a stay, applicable to all entities, of--

(1) the commencement or continuation, including the issuance or employment of process, or a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3), does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a government unit to enforce such governmental unit's police or regulatory power;

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty--

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(6) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required--

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $500 for "luxury goods or services" incurred by an individual debtor on or within forty days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan

obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or property settlement agreement, but not to the extent that--

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has

been assigned to the Federal Government or to a state or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a government unit, and is not compensation for actual pecuniary loss, other than a tax penalty--

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution, unless--

(A) such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

(9) to any entity, to the extent that such debt arises from a judgement or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or

its territories wherein such motor vehicle was operated and within which such liability was incurred; or

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965 (20 U.S.C. 1087-3), or under section 733(g) of the Public Health Services Act (42 U.S.C. 294f) in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is discharge-

able in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4) or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

§ 727 Discharge

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such

claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

B. Rule 17, Revised Rules of the Supreme Court of the United States. Considerations governing review on certiorari

.1 A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2 The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of ofl the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgements are reviewable by law on writ of certiorari.

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1 So in original.

STATEMENT OF THE CASE

This petition raises the question of whether a federal bankruptcy court has any authority to nullify a valid final judgment of a state criminal court and thus allow a convicted criminal, sentenced to make restitution, to escape justice by the simple expedient of listing the restitution order as a dischargeable debt on her bankruptcy petition.

The facts are not in dispute. See Appendix (App.) at 3A-4A, 30A-33A.[2] On July 28, 1980, the respondent pleaded guilty in Connecticut Superior Court to the crime of larceny in the second degree. See Connecticut General Statutes § 53a-123 (1979). The conviction arose out of the respondent's wrongful receipt of $9,932.95 in public assistance benefits from the petitioner Connecticut Department of Income

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2 The following statement of facts derives from the statement of facts contained in the Second Circuit and bankruptcy court opinions.

Maintenance (CDIM) while simultaneously receiving Social Security benefits. On November 14, 1980, a state Superior Court judge sentenced the respondent to a prison term of not less than one year nor more than three years, execution of which was suspended, and to probation for five years on the condition that she make restitution to the State of Connecticut in the amount of $9,932.95 at the rate of $100.00 per month, commencing January 16, 1981. A payment at that rate commencing at that time meant that the total amount that the respondent would have to restore over the five year probationary period amounted to $5,800.00.

On February 5, 1981, the respondent filed a voluntary petition for bankruptcy under Chapter 7 in the United States Bankruptcy Court for the District of Connecticut. See 11 U.S.C. § 701 et seq. The petition contained a schedule of creditors that listed, among others, CDIM as having a claim of $6,000 for public assistance and

the petitioner Connecticut Office of Adult Probation (COAP) as having a claim of $9,932.95 for restitution. On February 20, 1981, the bankruptcy court notified both CDIM and COAP of the respondent's Chapter 7 petition, but neither agency filed any form of objection to discharge by the April 27, 1981 deadline for doing so. On May 14, 1981, the bankruptcy court issued an order discharging the respondent from all dischargeable debts, declaring null and void all existing or future judgments that purported to hold the respondent personally liable with respect to any such dischargeable debts, and enjoining all creditors whose debts were thereby discharged from thereafter endeavoring to collect such debts.

After receiving her bankruptcy discharge on May 14, 1981, the respondent notified COAP of her intent to discontinue making payments and did in fact cease making them. The petitioner state agencies took no

action until February, 1984 when COAP wrote the respondent a letter requesting that she resume payment. The respondent replied by filing the present adversary proceeding in bankruptcy court against the Commissioner of CDIM, the Commissioner of the Connecticut Department of Administrative Services, the Director of COAP, and the Connecticut Chief State's Attorney. The respondent sought a declaration that the May 14, 1981 discharge order had discharged her restitution obligations to COAP and CDIM, an injunction prohibiting the named state officials from taking any steps to obtain further restitution payments, a finding that the state officials were in contempt of court, and an award of attorney's fees under 42 U.S.C. § 1988.

Following a brief trial on the merits, the bankruptcy court entered a Memorandum and Proposed Order denying all relief sought by the respondent. Relying on its decision in the companion case of In re Pellegrino,

42 B.R. 129 (Banker. D. Conn. 1984), the bankruptcy court concluded that a criminal restitution order does not constitute a bankruptcy "debt" within the meaning of 11 U.S.C. § 101(11) and that, even if it does, such a debt is a "penalty" and thus exempt from discharge under 11 U.S.C. § 523(a)(7). The district court adopted the proposed order and judgment entered for the state officials.

Upon appeal by the respondent, the United States Court of Appeals for the Second Circuit reversed and remanded. The court's opinion observed that a majority of the courts considering the issue have held that a criminal restitution obligation is not a debt under the Bankruptcy Code and that only one decision, In re Brown, 39 B.R. 820 (Bankr. M.D. Tenn. 1984), had held to the contrary. App. at 35A-36A, 38A. In adopting what was thus a minority rule, the Second Circuit relied on the fact that Congress had intended a broad meaning for

the word "debt," that the Code defined debt as a "right to payment," and that restitution created a right to payment since COAP had a right to receive and enforce payment of the restitution obligation. App. at 34A-43A, 45A-47A. The court explained that the Code's legislative history revealing Congress to have stated that "[t]he bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial over-extension," referred primarily to the exemption of criminal actions from the automatic stay, see 11 U.S.C. § 362(b)(1), not to the definition of "debt." App. at 43A-45A. The court added that the existence of the automatic stay exemption and of a specific exemption from discharge for fines and penalties, see 11 U.S.C. § 523(a)(7), demonstrated that "Congress drew such lines as it thought appropriate to grant or deny criminals the benefits of the bankruptcy laws," and that the majority line of cases had simply

"impermissibly reordered the priorities established by Congress." App. at 44A-45A. The court sought to distinguish four federal court of appeals cases that held or suggested that restitution is nondischargeable on the ground that in those cases the restitution obligation arose or would have arisen after bankruptcy and thus could not have constituted a "debt" under 11 U.S.C. § 727(b). App. at 41A-43A. Finally, the Court determined that the exemption from discharge in 11 U.S.C. § 523(a)(7) for a "penalty . . . payable to and for the benefit of a governmental unit . . . [that] is not compensation for actual pecuniary loss" did not apply. App. at 37A-42A. The Court reasoned that the phrase "not compensation for actual pecuniary loss" referred to obligations that were wholly non-compensatory and excluded those that were even partly compensatory. App. at 41A. Thus the Court could find that even though restitution represented a "penalty . . . payable

to and for the benefit of a governmental unit," it did not fit within the § 523(a)(7) exemption from discharge because it was at least partly compensatory in nature. App. at 41A-42A.

Judge Mansfield concurred in a separate opinion. App. at 53A-54A. He wrote that the court had reached an accurate but "unfortunate result." According to Judge Mansfield, the effect of the court's decision in many instances would be to "stultify and render useless criminal restitution payments as a means of punishing persons convicted of felonies." Judge Mansfield expressed his fear that "[t]he convicted criminal will simply use bankruptcy to escape the obligation to make criminal restitution payments ordered by the court." In closing, Judge Mansfield urged Congress to remedy "this unfortunate loophole" by amending 11 U.S.C. § 523(a)(7) to make criminal restitution payments non-dischargeable in bankruptcy.

REASONS FOR GRANTING THE WRIT

I. THE RULING OF THE COURT BELOW CREATES A CONFLICT AMONG THE CIRCUITS AND LOWER FEDERAL COURTS

In United States v. Carson, 669 F.2d 216, 217 (5th Cir. 1982), the Fifth Circuit found "untenable on its face" the notion that a prior discharge in bankruptcy of a debt created by the defendant's bank fraud prevented a federal criminal court from ordering the defendant, as a condition of his suspended sentence, to make restitution to the bank in the amount of its loss. On nearly identical facts, the Seventh Circuit reached the same conclusion. United States v. Alexander, 743 F.2d 472, 480 (7th Cir. 1980). The Third, Fifth, and Eleventh Circuits have all held that absent extraordinary circumstances a federal court should not enjoin state criminal proceeding that may result in a restitution order requiring the defendant to pay back a discharged debt,

In re Davis, 691 F.2d 176 (3d Cir. 1982), or a debt that may be discharged at the conclusion of pending bankruptcy proceedings. McDonald v. Burrows, 731 F.2d 294, 297-99 (5th Cir.), cert. denied, 105 S. Ct. 173 (1984); Barnette v. Evans, 673 F.2d 1250 (11th Cir. 1982).

The Second Circuit attempted to distinguish these decisions on the ground that the restitution orders there represented nondischargeable post-discharge debts under 11 U.S.C. § 727(b), whereas in the present case the restitution obligation arose well before bankruptcy.[3] This distinction is inaccurate with regard to the Fifth Circuit's ruling in McDonald v. Burrows, supra, and the Eleventh Circuit's ruling in Barnett v. Evans, supra. At the time that the debtor in those cases filed

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[3] The Second Circuit did not cite the Fifth Circuit's decision in McDonald v. Burrows, supra, but this decision is procedurally similar to the Eleventh Circuit's decision in Barnett v. Evans, supra, which the Second Circuit did cite.

his injunction action he had received neither a discharge nor a sentence of restitution and thus it was entirely possible that but for the court's decision restitution would have qualified as a dischargeable debt. See McDonald v. Burrows, 731 F.2d at 297-98; Barnette v. Evans, 673 F.2d at 1251. More importantly, not one of the five Courts of Appeals cases cites § 727(b) or otherwise limits its decision to restitution imposed after discharge. Rather, the suggestion in these cases is that Congress never had any intention of allowing for the discharge of criminal restitution, whenever imposed. See, e.g, United States v. Alexander, 743 F.2d at 480 ("The bankruptcy proceeding is largely unconcerned with criminality.")' Barnette v. Evans, 673 F.2d at 1251 ("The purpose of bankruptcy is to protect those in financial, not moral, difficulty"); United States v. Carson, 669 F.2d at 217 n.1 ("Deciding as we do that Carson's position does not make sense, we

conclude that Congress could not have endorsed it"). The Second Circuit's decision thus stands in conflict with the approach taken in these Court of Appeals cases. And as the Second Circuit itself acknowledged, its decision that restitution is a debt also conflicts with the explicit contrary holding reached by nearly every federal bankruptcy court to have addressed the matter. This Court should grant certiorari to resolve the conflict. See Rule 17.1(a), Revised Rules of the Supreme Court of the United States.

II. THE COURT OF APPEALS HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE AND THE RELATIONSHIP BETWEEN FEDERAL AND STATE GOVERNMENTS, AND THIS QUESTION HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

Reduced to its essential, the question in this case is whether Congress in enacting the Bankruptcy Code intended to create what Judge Mansfield labeled an "unfortunate loophole" through which convicted criminals

could escape. The case also represents a sequel to Ohio v. Kovacs, 105 S. Ct. 705 (1985), in which this Court held that the monetary costs of a state-obtained injunction that required a debtor to clean up a hazardous waste site constituted a debt in bankruptcy. The resolution of these issues will have a significant impact on the ability of federal and state governments to fashion punishment that meets the crime. See Brief of Amicus Curiae in Support of Petition.

1. The Court of Appeals has decided an issue of federal law in a way that thwarts expressed public policy regarding the criminal justice system and the relation between state and federal governments. The inquiry involved is one of statutory construction. Regretably the Court of Appeals made little mention of the applicable rules. The task of a federal court is "to interpret the words of . . . statutes

in light of the purposes Congress sought to serve." Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608 (1979). A court must attempt to "ascertain the congressional intent and give effect to the legislative will." Philbrook v. Glodgett, 421 U.S. 707, 713 (1975). "[I]nterpretations of a statute which would produce absurd results are to be avoided if alternate interpretations consistent with the legislative purpose are available." Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982).

The Bankruptcy Code defines "debt" as a "liability on a claim," 11 U.S.C. § 101(11), and a "claim," in pertinent part, as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(4)(A). The other provision at stake is 11 U.S.C. § 523(a)(7), which creates an

exemption from discharge for debts "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." The Court of Appeals erred in concluding that a criminal restitution order represents a mere debt to a probation department and that § 523(a)(7) means that if a debt is merely partially as opposed to primarily "compensation for actual pecuniary loss," then it is not exempt from discharge. Although it is true that Congress intended a broad meaning for the word "debt," a restitution order bears little resemblance to the ordinary debt. A probation department, of course, has in the first instance a "right to payment" of the restitution order, but a probation department does not set the amount of the obligation, it cannot assign the obligation, and it does not retain the payments. App. at 12A. Nor is restitution mere "compensation for actual pecuniary loss." The accepted theory is that

an order of probation, of which restitution constitutes a condition, is "an authorized mode of mild and abmulatory punishment . . . intended as a reforming discipline." Korematsu v. United States, 319 U.S. 432, 435 (1943). Restitution, moreover:

> undoubtedly serves traditional purposes of punishment. The prospect of having to make restitution adds to the deterrent effect of imprisonment and fines, penalties that might seem to some offenders less likely to be imposed than restitution. Restoring the victim's property also serves the legitimate penal purpose of vindicating society's interest in peaceful retribution. Finally, restitution can be a useful step toward rehabilitation.

United States v. Brown, 744 F.2d 905, 909 (2d Cir.), cert. denied, 105 S. Ct. 599 (1984). "While recompense to the victim is a usually laudable consequence of restitution, the focus of any probation regimen is on the offender." United States v. Carson, 669 F.2d at 217.

Even if these points do not in themselves establish the conclusion that the court below misinterpreted the Bankruptcy Code, that conclusion becomes apparent upon application of the governing rules of statutory construction. Indeed, the position adopted by the Court of Appeals clashes frontally with the purposes Congress sought to serve in enacting the Bankruptcy Code. Chapman v. Houston Welfare Rights Organization, supra. Congress made clear in the Code's legislative history that "[t]he bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial over-extension. Thus criminal actions and proceedings may proceed in spite of bankruptcy." 1978 U.S. Code Cong. & Ad. News 5837. While as the court below pointed out, this language refers in the first instance to the automatic stay exemption in 11 U.S.C. § 362(b)(1), it cannot be reasonably assumed that Congress sought to exempt criminal proceedings from the automatic stay

and at the same time provide for the partial nullification of criminal proceedings by discharge of a restitution order. Discharge of a criminal restitution order, moreover--an order imposed after a court has found a person guilty of a crime beyond a reasonable doubt--has little to do with the goal of providing distressed debtors "relief from financial over-extension." The interpretation of the Code that most closely furthers the purposes Congress expressly sought to serve is that restitution and criminal fines are not debts at all or, if they are, then the phrase "not compensation for actual pecuniary loss" refers to the primary purpose of the obligation, so that restitution, even if a debt, would at least remain exempt from discharge under 11 U.S.C. § 523(a)(7).

Such an interpretation is also consistent with the general doctrine in public policy, enunciated in Younger v. Harris, 401 U.S. 37 (1971), that federal

courts, including bankruptcy courts, should not interfere with criminal prosecutions in the states. See Barnette v. Evans, 673 F.2d at 1251-52. The Younger notion of "comity" comprises "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." 401 U.S. at 44. Accordingly, "the National Government, anxious through it may be to vindicate and protect federal rights and federal interests, [should] always endeavor[] to do so in ways that will not unduly interfere with the legitimate activities of the States. Id. In this case, the interpretation lent the Bankruptcy Code by the Court of Appeals dramatically compromises the objectives of the Younger doctrine by allowing a federal bankruptcy

court to nullify the enforcement of a valid final judgment of a state criminal court. See Huffman v. Pursue, Ltd., 420 U.S. 592, 599 (1975) (Younger applies to attempts to enjoin enforcement of state civil nuisance judgment). One cannot easily imagine that this result "give[s] effect to the legislative will," Philbrook v. Glodgett, supra, or that it reflects, in the words of the Court of Appeals, the "priorities established by Congress."[4]

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[4] The Younger doctrine does not, of course, leave a debtor helpless in the occasional case in which the animus of the state prosecution is "neither punishment nor a sense of public duty, but rather [a desire] to obtain payment of a dischargeable debt either by an order of restitution or by compromise of the criminal charge upon payment of the civil obligation . . . ." In re Taylor, 16 B.R. 323, 326 (Bankr. D. Md. 1981). In such a case the debtor can normally challenge the bona fides of the prosecution in state court, as the Third and Eleventh Circuits have explained. In re Davis, 691 F.2d at 178; Barnette v. Evans, 673 F.2d at 1252. But if state remedies are ineffective or it is evident that the state prosecution is brought in bad faith or for purposes of harassment, In re Davis, 691 F.2d at 178, then a bankruptcy court can and should assume jurisdiction pursuant to 11 U.S.C. § 105(a) and enjoin the participants in the state prosecution. Id. at 177 & n.5; In re Wise, 25 B.R. 440, 441-42 (Bankr. E.D. Va. 1982).

Finally, the interpretation lent the Code by the court below produces decidely absurd results, Griffin v. Oceanic Contractors,Inc. supra, as the concurring opinion essentially acknowledges. The Court's decision allows for the growth of a revolving door system of justice whereby a defendant convicted of a crime in state criminal court can merely walk across the street to federal bankruptcy court and escape justice. Surely Congress did not intend such a result.

The respondent may argue that the state's remedy is to file a timely objection to discharge pursuant to 11 U.S.C. § 523(a), which the state did not do in this case. This proposal has little to commend it. As a general matter, when a state court has already adjudicated an individual guilty of a crime beyond a reasonable doubt, the state should not then have to shoulder the added burden of going into federal court to see that the individual does not escape punish-

ment. Cf. Imbler v. Pachtman, 424 U.S. 409, 425 (1976) ("if the prosecutor could be made to answer in court each time...a person charged him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.") Any such proposal, moreover, would merely narrow the existing loophole without eliminating it. Although an exception to discharge exists for debts created by "wilful and malicious injury by the debtor to another entity or to the property of another entity," 11 U.S.C. § 523(a)(6), no exception exists that would prevent the discharge of restitution in cases involving valid state crimes such as reckless burning, see Conn. Gen. Stat. § 53a-114 (1985), or negligent assault with a deadly weapon. See Id. § 53a-61(a)(3) (1985). Thus the respondent cannot advance an argument that the Code, as interpreted by the Second Circuit,

embodies a rational scheme that would consistently prevent the discharge of criminal restitution.

Nor is the answer merely to repair to Congress, as suggested by the concurring opinion. Inevitably Acts of Congress will lend themselves to strained interpretations that produce irrational results. The remedy in such instances is not reflexively to appeal to Congress for new legislation, but rather to apply the already existing rules of statutory construction that preclude reliance upon absurd interpretations, Griffin v. Oceanic Contractors, Inc., supra, and that proscribe the adoption of results in conflict with underlying statutory objectives. Chapman v. Houston Welfare Rights Organization, supra. The Court of Appeals erred by failing to apply these rules and, consequently, by interpreting the Bankruptcy Code in a way that thwarts important public policy regarding federalism and the administration of criminal justice.

This Court should accordingly grant certiorari. See Rule 17.1(c), Revised Rules of the Supreme Court of the United States.

2. This case also represents a sequel to this Court's recent decision in Ohio v. Kovacs, supra, which held that the monetary costs of a state-obtained injunction that required a debtor to clean up a hazardous waste site constitute a bankruptcy debt. Although the Court of Appeals did not rely on Kovacs, citing the case only for the proposition that the Code's definition of debt is "broad," App. at 38A, it is well to note that Kovacs does not at all mandate the result reached below. The Kovacs question of whether a bankruptcy debt arises when the state exercises its civil injunctive powers has little to do with the question here of whether a bankruptcy debt also arises when a state seeks to further its "'legitimate and compelling state interest' in protecting the community from crime.'" Schall v. Martin,

104 S. Ct. 2403, 2410 (1984). See also Younger v. Harris, 401 U.S. at 55 n.2 (Stewart, J., concurring) ("A State's decision to classify conduct as criminal provides some indication of the importance it has ascribed to prompt and unencumbered enforcement of its law."). Indeed, the Kovacs Court attempted to make clear that its holding did not extend to criminal cases:

> It is well to emphasize what we have not decided. First, we do not suggest that Kovacs' discharge will shield him from prosecution for having violated the environmental laws of Ohio or for criminal contempt for not performing his obligations under the injunction prior to bankruptcy. Second, had a fine or monetary penalty for violation of state law been imposed on Kovacs prior to bankruptcy, § 523(a)(7) forecloses any suggestion that his obligation to pay the fine or penalty would be discharged in bankruptcy.

105 S. Ct. at 711. Although this language extends literally only to fines and penalties and implicitly treats them as nondischargeable debts under § 523(a)(7) rather than as nondebts under § 101(11), it

nonetheless plainly indicates this Court's view of the Bankruptcy Code as having minimal application to criminal judgments--a view apparently not shared by the Second Circuit. This Court should grant certiorari to address the criminal law questions not presented by the facts in Kovacs. See Rule 17.1(c), Revised Rules of the Supreme Court of the United States.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

JOHN J. KELLY,
CONNECTICUT CHIEF
STATE'S ATTORNEY
DIRECTOR, OFFICE OF
ADULT PROBATION
COMMISSIONER, DEPARTMENT
OF INCOME MAINTENANCE
COMMISSIONER, DEPARTMENT
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General
State of Connecticut

No.

In The

Supreme Court Of The United States

OCTOBER TERM, 1985

JOHN J. KELLY,
CONNECTICUT CHIEF STATE'S ATTORNEY, ET AL.,
Petitioner,

v.

CAROLYN ROBINSON,
Respondent.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re CAROLYN ROBINSON, Debtor	Chapter 7 Case No. 5-81-00114
CAROLYN ROBINSON, Plaintiff v. DIRECTOR, OFFICE OF ADULT PROBATION; AUSTIN J. MCGUIGAN, CHIEF STATE'S ATTORNEY, DIVISION OF CRIMINAL JUSTICE OF THE JUDICIAL DEPARTMENT; COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE; COMMISSIONER, DEPARTMENT OF ADMINISTRATIVE SERVICES, Defendants	Adv. No. 5-84-0063

APPEARANCES

Francis X. Dineen, Esq.	: Attorneys for
Joanne S. Faulkner, Esq.	: Plaintiff
New Haven Legal Assistance	:
Association, Inc.	:
399 Temple Street	:
New Haven, CT	:

Edward F. Reynolds, Esq. Assistant Attorney General State of Connecticut 90 Brainard Road Hartford, CT	: Attorney for : Defendants : Commissioner, : Department of : Income Maintenance : and Commissioner : of Administrative : Services, Bureau of : Collection Services
Carl Schuman, Esq. Assistant State's Attorney Office of Chief State's Attorney 100 South Turnpike Road Wallingford, CT	: Attorney for : Defendants : Austin J. McGuigan, : Chief State's : Attorney : Division of Criminal : Justice : Judicial Department : and Director, Office : of Adult Probation

MEMORANDUM AND PROPOSED ORDER

Alan H. W. Shiff, Bankruptcy Judge

The plaintiff-debtor, Carolyn Robinson, brought this action to determine, *inter alia*, the dischargeability of an order of restitution entered by the Superior Court of the State of Connecticut as a condition of probation in connection with the plaintiff's conviction for larceny in the second degree.

BACKGROUND

On July 28, 1980, the plaintiff pleaded guilty to larceny in the second degree in violation of Connecticut General Statute § 53a-123.[1] The conviction arose out of the plaintiff's wrongful receipt of public assistance benefits in the amount of $9,932.95. On November 14, 1980, the Connecticut Superior Court sentenced the plaintiff to a prison term of not less than one year nor more than three years, execution of which was suspended and the plaintiff was placed on probation for five years on the condition that she make restitution in the amount of $9,932.95 to the State of Connecticut at the rate of $100.00 per month, commencing January 16, 1981.[2]

On February 5, 1981, the plaintiff filed a Chapter 7 petition in this court and listed as unsecured creditors on Schedule A-3, the State of Connecticut Department of Income Maintenance on a claim of $6,000.00 for public assistance for the years 1973-1976 and the Office of Adult Probation on a claim of $9,932.95 for the November 14, 1980 restitution order. The plaintiff obtained a discharge by the May 14, 1981 order of this court.

On March 26, 1984, the plaintiff filed an amended complaint, which is the subject of this action, seeking in the

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[1] *State of Connecticut v. Robinson*, Docket No. CR6-185844.

[2] It should be noted payment of $100.00 per month commencing on January 16, 1981, would reduce her restitution payment to $5,800.00 if all payments were made.

First Count, a determination that the restitution obligation is a dischargeable debt which had been discharged on May 14, 1981. The Second Count alleges that the defendants' efforts to collect the restitution since her discharge on May 14, 1981, "are in violation of this Court's action discharging the debtor, and of this Court's action discharging the debtor, and of 11 U.S.C. secs. 524 and 525."[3] The plaintiff alleges in the Third Count that the actual or threatened actions of the defendants "are depriving plaintiff of her civil rights, privileges, immunities under color of state law, in violation of 42 U.S.C. sec. 1983."[4]

The plaintiff seeks the following relief from this court:

1. an order declaring that the larceny debt[5] , for which she was convicted, and the "restitution debt", ordered by the state court, are dischargeable and have been discharged;

2. an order enjoining the defendants from taking any steps to obtain payment of the restitution or otherwise enforcing the criminal judgment;

3. an order assessing attorney's fees and costs against

---

[3] Amended Complaint ¶ 18.

[4] Amended Complaint ¶ 19.

[5] Since the defendants failed to file a complaint to determine the dischargeability of the larceny debt, that debt was discharged under Code § 523(c) prior to the commencement of this action. Therefore the plaintiff's claim for relief in the form of an order declaring the larceny debt discharged when it has already been discharged by operation of law will not be considered in this decision. To the extent that the plaintiff's complaint may be read to include a claim for attorney's fees and other relief in connection with the larceny debt, those claims will likewise be excluded from consideration in this decision. There was no evidence that any of the defendants asserted a claim or attempted to collect the larceny debt at any time.

the office of Adult Probation pursuant to this court's equitable powers and 42 U.S.C. § 1988 payable to New Haven Legal Assistance Association;

4. appropriate orders for contempt and violation of the plaintiff's civil rights, including compensatory damages, punitive damages, and attorney's fees; and

5. such other further relief as this court deems just and fair.[6]

DISCUSSION AND ORDER

The facts in this proceeding, the issues raised, and the relief sought by the plaintiff are virtually identical to those in *In re Pellegrino,* Adv. No. 5-83-0554 (Bankr. D. Conn. July 25, 26, 1984) (appeal pending). A copy of this court's July 25, 1984 Memorandum of Findings, Conclusions of Law and Proposed Order and the July 26, 1984 order of the District Court, Daly, C.J. in *Pellegrino* are attached hereto. Accordingly, the following legal conclusions, reached in *Pellegrino,* are adopted to the facts here.

1. The state court's order that the plaintiff make restitution to the State of Connecticut of $9,932.95 as a condition of probation following the plaintiff's larceny conviction did not create a "debt" as defined in Code § 101(11). Therefore the plaintiff's obligation to pay restitution was unaffected by this court's May 14, 1981 discharge order.[7]

2. Assuming *arguendo* that the state court's order of restitution did not create a "debt" within the purview of the Bankruptcy Code, such a debt is a "penalty" and therefore excepted from discharge under § 523(a)(7).[8]

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[6] Amended Complaint p. 5.

[7] *In re Pellegrino,* Memorandum and Order, July 25, 26, 1984, at 5-10.

[8] *In re Pellegrino, supra,* at 13-19.

ORDER

For the foregoing reasons, the obligation created by the state court restitution order was not discharged by the May 14, 1980 discharge order of this court, the plaintiff is not entitled to the injunctive relief, damages, costs, attorney's fees and other relief claimed in her amended complaint and judgment may enter accordingly.

Dated at Bridgeport, this 31st day of August, 1984.

(sig.)

Alan H. W. Shiff
United States Bankruptcy Judge

It is So ORDERED.

Dated at Bridgeport, this 4th day of September, 1984.

(sig.)

T. F. Gilroy Daly
Chief Judge, United States District Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re

LOUIS PASQUALE PELLEGRINO and
FLORENCE ANN PELLEGRINO,

Debtors

Chapter 7
Case No. 5-83-00361

LOUIS PASQUALE PELLEGRINO and FLORENCE ANN PELLEGRINO,

Plaintiffs

v.

Adv. No. 5-83-0554

DIVISION OF CRIMINAL JUSTICE, CHIEF STATE'S ATTORNEY FOR THE J.D. OF NEW HAVEN, JUDICIAL DEPARTMENT;
DIRECTOR, OFFICE OF ADULT PROBATION;
COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE;
COMMISSIONER OF ADMINISTRATIVE SERVICES, BUREAU OF COLLECTION SERVICES,

Defendants

APPEARANCES

Francis X. Dineen, Esq. : Attorneys for
Joanne S. Faulkner, Esq. : Plaintiff
New Haven Legal Assistance :
Association, Inc. :
399 Temple Street :
New Haven, CT :

Edward F. Reynolds, Esq. Assistant Attorney General State of Connecticut 90 Brainard Road Hartford, CT	: Attorney for : Defendants : Commissioner, : Department of : Income Maintenance : and Commissioner : of Administrative : Services, Bureau of : Collection Services
Carl Schuman, Esq. Assistant State's Attorney Office of Chief State's Attorney 100 South Turnpike Road Wallingford, CT	: Attorney for : Defendants : Division of Criminal : Justice and Director, : Office of Adult : Probation

MEMORANDUM AND PROPOSED ORDER

Alan H. W. Shiff, Bankruptcy Judge

The plaintiffs, debtors, brought this action to determine, *inter alia*, the dischargeability of an order of restitution entered by the Superior Court of the State of Connecticut for the Judicial District of New Haven as a condition of probation in connection with a larceny conviction of the debtor Florence Pellegrino.

I.
BACKGROUND

On June 30, 1982, Florence Pellegrino was arrested for larceny in the second degree for fraudulently obtaining food stamps in the amount of $15,960.00 in violation of Connecticut General Statutes §§ 17-83i and 53a-123. Pellegrino pleaded guilty to the charges, and on October 29, 1982, she was sentenced to a two year prison term.[1] Execution of the prison term was suspended, and Pellegrino was placed on probation for five years on the condition that she make restitution in the amount of $15,960.00 to the State of Connecticut. At the sentencing, Pellegrino and her husband, Louis, pleaded for probation as an alternative to incarceration and suggested that restitution be paid out of Louis Pellegrino's wages. A wage execution was thereafter ordered in the amount of $40.00 per week. Because the parties have treated the wage execution as a part of the so-called restitution debt, this court will adopt that view.

On April 14, 1983, the plaintiffs filed a voluntary joint petition in this court under Chapter 7 of the Bankruptcy Code. Each of the plaintiffs listed the defendants State of Connecticut Department of Income Maintenance, Bureau of Collection Services and Office of Adult Probation as unsecured creditors on their Schedule A-3.[2] The plaintffs ob-

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[1] *State of Connecticut v. Florence Pellegrino*, docket No. CR6-207900.

[2] It should be noted that although paragraph 4 of each count of the plaintiffs' Amended Complaint alleges that "a debt to the (continued)

tained a discharge by the August 26, 1983 order of this court.

On February 7, 1984, the plaintiffs filed an amended complaint, seeking, in the First Count, a determination that the restitution order of the state court is a dischargeable debt which had been discharged by the order of this court. The Second Count alleges that the defendants violated the automatic stay provided by Code § 362(a) when they "continued to enforce the wage execution and collect amounts from Mr. Pellegrino's pay pursuant to the restitution order."[3] The plaintiffs further allege that the continued acceptance of money from Louis Pellegrino's wages "and any effort defendants may make to enforce the restitution order is in violation of this Court's order discharging the debtors and of 11 U.S.C. §§ 524 and 525."[4] The plaintiffs allege in the Third Count of their Amended Complaint that the actions of the defendants "have deprived and are depriving the plaintiffs of their civil rights, privileges, or immunities under color of state law" in violation of the Civil Rights Act, 42 U.S.C. § 1983.[5]

The plaintiffs seek the following relief from this court:[6]

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[2] continued
State of Connecticut Department of Income Maintenance, the Bureau of Collection Services, and the Adult Probation Department" was "duly scheduled", Schedule A-3 of the plaintiffs' petition lists those three creditors and an "AFDC" claim, estimated at $65,000.00 for the years 1969-1983. That was the only claim attributed to the defendants in their schedules. The "restitution debt" of $15,960.00, which is the subject of this proceeding, was not listed. Since, however, the defendants received notice of this Chapter 7 case as scheduled unsecured creditors, the "restitution debt" was not excluded from discharge under Code § 523(a)(3).

[3] Amended Complaint ¶ 11.

[4] Amended Complaint ¶ 12.

[5] Amended Complaint ¶ 13.

[6] Amended Complaint p. 4.

1. an order declaring that the larceny debt[7], for which Pellegrino was convicted, and the "restitution debt", ordered by the state court, are dischargeable and have been discharged;

2. an order enjoining the defendants from taking any steps to obtain payment of the restitution or otherwise enforcing the criminal judgment;

3. an order enjoining the defendants from continuing the wage execution on Louis Pellegrino's wages;

4. an order assessing attorney's fees and costs against the defendants pursuant to this court's equitable powers and 42 U.S.C. § 1988, payable to New Haven Legal Assistance Association;

5. appropriate orders for contempt and violation of the plaintiff's civil rights; and

6. such other and further relief as this court deems just and fair.

[7] Since the defendants failed to file a complaint to determine the dischargeability of the larceny debt, that debt was discharged under Code § 523(c) prior to the commencement of this action. Therefore the plaintiffs' claim for relief in the form of an order declaring that the larceny debt was discharged, when it has already been discharged by operation of law, will not be considered in this decision, and to the extent that the plaintiffs' complaint may be read to include a claim for attorney's fees and other relief in connection with the larceny debt, those claims will likewise be excluded from consideration in this decision. There was no evidence that any of the defendants asserted a claim or attempted to collect the larceny debt at any time.

II.
DISCUSSION

A.
IS RESTITUTION A DEBT?

Bankruptcy Code § 101(11) provides that the word "debt" means "liability on a claim." "Claim" is defined in § 101(4) as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." A "creditor," under § 101(9) is an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor."

Under Connecticut's penal code, restitution is one of nine conditions of probation enumerated in Conn. Gen. Stat. § 53a-30. Criminal defendants ordered to make restitution by the court send their payments to the Connecticut Office of Adult Probation which is responsible for monitoring compliance with the court's order of restitution. Conn. Gen. Stat. § 53a-30(b). The crime victim receives payments from the Office of Adult Probation. Under the penal code, a victim cannot enforce a court's order of restitution if the criminal defendant fails to make payments to the Office of Adult Probation. The state court may, however, issue a warrant for the arrest of the criminal defendant for violation of a condition of probation. Conn. Gen. Stat. § 53a-32. Since a crime victim has no "right to payment," restitution is not a "debt" under Bankruptcy Code § 101(11). *Accord, In re Johnson*, 32 B.R. 614 (Bankr. D. Col. 1983) (applying Colorado law); *In re Magnifico*, 21 B.R. 800, 9 B.C.D. 670 (Bankr. D. Ariz. 1982) (applying Arizona law); *In re Button*, 8 B.R. 692, 7 B.C.D. 307 (Bankr. W.D. N.Y. 1981) (applying New York law). *Compare In re Newton*, 15 B.R. 708, 8 B.C.D. 522 (Bankr. N.D. Ga. 1981) *aff'd*, No. C81-2170A (N.D. Ga. May 24, 1982). (where the bankruptcy court held that an order of restitution is a debt in Georgia where state law provides

that "a restitution order shall be enforceable as a civil judgment by execution.")

Furthermore, the relationship in this proceeding between the criminal defendant and her victim lacks other typical attributes of a debtor-creditor relationship. Unlike an obligation which arises out of a contractual statutory or common law duty, here the obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose.

As noted, Pellegrino was prosecuted, convicted and sentenced to two years in prison. Acting under the authority of Conn. Gen. Stat. § 53a-28, the state court suspended Pellegrino's prison term and placed her on probation. Using its wide discretion in setting conditions of probation, *State v. Pilch*, 35 Conn. Supp. 536, 539, 394 A.2d 1364 (1977), the court ordered Pellegrino to make restitution to the State of Connecticut. In ordering restitution under Conn. Gen. Stat. § 53a-30(a)(4), the court fixed the amount she had to pay and the manner of payment. Clearly the plaintiff's payments to the Office of Adult Probation are not a debtor's payments to a creditor. The obligation here arose from a court ordered sanction following a criminal conviction. The fact that the victim is an incidental beneficiary of that process does not alter the basic relationship between Pellegrino and the State.

Other courts have similarly held that a debtor's obligation to make restitution as a condition of probation is not a debt within the meaning of the Bankruptcy Code. *See In re Johnson, supra; In re Magnifico, supra; In re Button, supra.*[8] *But see In re Brown*, 11 B.C.D. 1048 (Bankr. M.D.

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[8] Decisions applying the Bankruptcy Act of 1898 also stand for this proposition. *See People v. Washburn*, 97 Cal. App. 3d 621, 158 Cal. Rptr. 822 (1979); *People v. Mosesson*, 78 Misc.2d. 217, 356 N.Y.S.2d 483 (Sup. Ct., N.Y. Co., 1974).

Tenn. 1984), *appeal docketed*, No.384-0585 (M.D. Tenn. May 22, 1984).

In *Button*, the debtor pleaded guilty to petty larceny, was placed on probation, and ordered to make restitution to the victim. As in this case, the debtor filed a Chapter 7 petition and listed his victim as a creditor. When the debtor stopped making restitution payments, he was charged with violation of probation which prompted him to seek a bankruptcy court order enjoining enforcement of the state court order of restitution.

The *Button* court held that restitution ordered as a condition of probation, pursuant to § 65.10(2) of the Penal Law of the State of New York,[9] was not a debt and the victim was not a creditor. *Button*, *supra*, 8 B.R. at 694. As the *Button* court explained,

> With restitution, the victim has no right to payment. It is the criminal court which sets the restitution amount and if it is not paid the victim cannot proceed against the debtor to enforce payment, but instead the probation officer must report the event of nonpayment to the court which in turn determines if a violation of probation has occurred.

Id.

The court in *In re Magnifico*, *supra*, 21 B.R. 800, likewise held that an obligation to pay restitution "is not a debt contemplated by the Bankruptcy Code." *Id.* at 803. The *Magnifico* court described restitution as "an obligation made directly to the State of Arizona, acting on behalf of its citizens for their benefit, and to further impress [upon] the debtor . . .

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[9] Section 65.10 of the New York Penal Law, like Conn. Gen Stat. § 53a-30, establishes conditions of probation which include restitution. The restitution provisions in these two statutes are virtually identical and form a part of a general statute intended in New York "to insure that the defendant will lead a law-abiding life or to assist him to do so," and in Connecticut to provide "conditions reasonably related to [the offender's] rehabilitation.

his criminal responsibility for his criminal acts." *Id.*

This court is aware that the bankruptcy court in *In re Brown, supra,* 11 B.C.D. 1048, recently held that restitution is a debt for purposes of the Bankruptcy Code. In so holding, the *Brown* court stated:

> If the right of payment and the liability in a criminal court order of restitution were intended to be outside of the realm of debt for bankruptcy purposes, then how simple it would have been for Congress to include appropriate language in the Bankruptcy Code.

Id. at 1049-1050.

This court acknowledges that the Bankruptcy Code's definition of "debt" contains no express exception for obligations arising out of state criminal proceedings. However, such an exception may be found in the long-standing tradition of restraint by federal courts from interference with traditional functions of state governments. *See Younger v. Harris,* 401 U.S. 37 (1971); *Perez v. Ledesma,* 401 U.S. 82 (1971); *In re Davis,* 691 F.2d 176 (3d Cir. 1982). Bankruptcy laws are no exception, particularly where criminal proceedings are involved. *See Barnette v. Evans,* 673 F.2d 1250 (11th Cir. 1982); *In re Wilson,* 30 B.R. 91 (Bankr. E.D. Tenn. 1983); *In re Richardello,* 28 B.R. 344, 10 B.C.D. 734 (Bankr. D. Mass. 1983). As the legislative history of Code § 362(b)(1) states,

> The bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial over-extension. Thus, criminal actions and proceedings may proceed in spite of bankruptcy.

House Report No. 595, 95th Cong., 1st Sess. 342, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6299. *See also* S. Rep. No. 989, 95th Cong., 2nd Sess. 51, *reprinted in* 1978 U.S. Code. Cong. & Ad. News 5787, 5837.

With this congressional policy in mind, it would defy both logic and reason to allow a convicted person, who has

been ordered to make restitution to his victim in lieu of incarceration, to use the Bankruptcy Code to escape the consequences of his crime. The definition of debt must therefore be read in the context of that policy in order to avoid that anomalous result.

The question then is does the fact that a state agency was the victim of a crime alter the conclusion that restitution is not a debt within the meaning of Code § 101(11)? While several courts have considered restitution in the context of a private victim, *In re Brown, supra; In re Johnson, supra; In re Magnifico, supra; In re Button, supra,* this appears to be the first court to consider the issue where a state is both the victim of the crime and the recipient of the restitution.

Although several parts of the Connecticut governmental unit were involved in the prosecution, collection, deposit and enforcement process necessitated by Pellegrino's criminal conduct, each must be considered as a separate entity in analyzing whether a debtor-creditor relationship was established by the state court order of restitution. Therefore the mere fact that one state agency was the actual victim of the crime and another part of the same governmental unit prosecuted Pellegrino and may enforce the order of restitution is an insufficient basis to create a debtor-creditor relationship between Pellegrino and the State. Had Pellegrino committed a crime against a private citizen, that victim, as previously observed, could not enforce the restitution order. Under those circumstances there would be no debtor-creditor relationship and no "debt" as defined in Code § 101(11) to be discharged. It is accordingly concluded that the mere fact that the State of Connecticut was the victim of Pellegrino's crime is irrelevant to the issues presented here. As Assistant State's Attorney Schuman correctly argued, "The people of the state [cannot] have fewer rights than a private victim."[10]

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[10]Tr. May 18, 1984, at 24.

In view of the foregoing, it is concluded that the state court's order that Pellegrino make restitution did not create a debt under the Bankruptcy Code. Accordingly, that obligation was unaffected by this court's August 26, 1983 discharge order.

Even assuming *arguendo* that the order of restitution is a "debt" within the purview of the Bankruptcy Code, the post petition collection of that debt by the defendants would not violate the automatic stay provided by Code § 362(a). Moreover, that "debt" would be excepted from discharge pursuant to Code § 523(a)(7).

B.
AUTOMATIC STAY

Although the Plaintiffs primarily seek a determination that the order of restitution is a dischargeable debt, their complaint also alleges that the defendants' post petition enforcement of the wage execution was a violation of the automatic stay provided by Code § 362(a).[11] The plaintiffs' contention is without merit. The wage execution on Louis

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[11] Although the plaintiffs do not designate which portions of Code § 362(a) they rely on, the subsections which appear to be consistent with their allegations are §§ 362(a)(1), 362(a)(2) and 362(a)(6) which provide in pertinent part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(continued

Pellegrino's wages was an integral part of the sentence which followed the state's prosecution of his wife.

Code § 362(b)(1) provides in relevant part:

> (b) The filing of a petition . . . does not operate as a stay –
>
> > (1) under subsection (a) this section, of the commencement or continuation of a criminal action or proceeding against the debtor.

The literal language of that provision together with its legislative history as an expression of congressional policy against bankruptcy court interference with criminal proceedings, recounted *supra* at p. 10, compels the conclusion that neither the restitution nor the wage execution, ordered as a means of carrying it out, were stayed by the filing of the plaintiffs' bankruptcy petition. *Accord, In re Newton*, 15 B.R. at 710 (Bankr. N.D. Ga. 1981) *aff'd*, No. C81-2170A (N.D. Ga. May 24, 1982). To view the wage execution and its enforcement throughout the five-year probationary period as separate from the conviction and sentencing of Pellegrino would distort reality.

The enforcement of the wage execution may also be viewed as the "continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power". As such, that activity is excepted from the automatic stay by § 362(b)(4). In addition, the en-

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[11]continued

> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (6)any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

forcement of the wage execution might arguably be excepted from the automatic stay under § 362(b)(5)[12] in that the wage execution was ordered to implement the state court judgment of conviction, a nonmonetary judgment, "obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulating power." The § 362(b)(4) and § 362(b)(5) exceptions to the automatic stay should be construed broadly "[w]here important state law or general equitable principles protect some public interest." *Penn. Terra Ltd. v. Dept. of Environ. Resources*, 733 F.2d 267 (3rd Cir. 1984).

It is therefore concluded that the enforcement of the wage execution ordered by the state court to implement its order of restitution was excepted from the automatic stay, and any post petition action by the defendants in that regard did not constitute contempt of this court's order.

C.

DISCHARGEABILITY

CODE § 523(a)(7)

As this court observed in a different context in *In re Harron*, 31 B.R. 466, 467-468 (Bankr. D. Conn. 1983)

> The rich tradition of justice and equity which has characterized our approach to the regulation

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[12]Code § 362(b)(5) provides in relevant part as follows:

> (b) The filing of a petition under section 301 . . . of this title, . . . does not operate as a stay –
>
> (5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

> of society through law has long recognized that relief must be provided to the honest debtor who cannot endure the burden of financial distress. The current Bankruptcy Code and its predecessors provide that relief to individual debtors. Under the Code a two fold objective is sought. A debtor who files under Chapter 7 is relieved from his dischargeable debts and is given a fresh start in the form of allowable exemptions while the members of each class of his creditors are assured equal treatment in the distribution of his remaining assets. That balance, however, rests, *inter alia*, upon the premise that the petitioning debtor is honest and is therefore entitled to such relief, and when it can be demonstrated otherwise, the discharge is denied.

Code § 523(a) provides a statutory basis for challenging the dischargeability of certain debts, including debts for a fine or penalty. Thus, as noted, *supra*, even assuming *arguendo* that the state court order of restitution in this case is a debt within the purview of the Bankruptcy Code, the result in this proceeding would not change because such a debt would be excepted from discharge under Code § 523(a)(7). Code § 523(a)(7) provides in pertinent part:

> (a) a discharge under section 727, . . . of this title does not discharge an individual debtor from any debt –
>
> . . . .
>
> (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss . . .

The plaintiffs contend that the § 523(a)(7) exception to dischargeability does not apply here because the restitution order was established by the

state court to provide "compensation for actual pecuniary loss". There is no merit to that contention.

An analysis of Connecticut's probation statute, Conn. Gen. Stat. § 53a-30(a),[13] reveals an enumeration of eight specific kinds of conditional release and a ninth nonspecific method, consisting of "any other conditions reasonably related to [the offender's] rehabilitation." It is therefore apparent that the focus of Connecticut's probation statute is upon the offender and that the purpose of probation in Connecticut is rehabilitation.

The United States Supreme Court has defined probation as "an individualized program offering a[n] . . . unhardened offender an opportunity to rehabilitate himself without institutional confinement. . . ." *Roberts v. United States*, 320 U.S.

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[13]Conn. Gen. Stat. § 53a-30(a) provides in pertinent part:

> When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant: (1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment; (2) undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose; (3) support his dependents and meet other family obligations; (4) make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance; (5) if a minor, (A) reside with his parents or in a suitable foster home, (B) attend school, and (C) contribute to his own support in any home or foster home; (6) post a bond or other security for the performance of any or all conditions imposed; (7) refrain from violating any criminal law of the United States, this state or any other state; (8) reside in a residential community center or halfway house approved by the commissioner of correction, and contribute to the cost incident to such residence; (9) *satisfy any other conditions reasonably related to his rehabilitation.* (emphasis added).

264, 272, 64 S.Ct. 113, 117, 88 L.Ed. 41 (1943). The Connecticut courts have likewise long held:

> "[Probation's] aim is reformatory and not punitive. It is to bring one who has fallen into evil ways under oversight and influences which may lead him to a better living. The end sought is the good of the individual wrongdoer, and not his punishment.

Belden v. Hugo, 88 Conn. 500, 504, 91 A. 369, 370 (1914).

As one of the eight specific statutory options available to the state court imposing a sentence of probation, restitution is intended to promote the rehabilitation of the offender, not to compensate the victim. The rehabilitative nature of restitution, ordered as a condition of probation, was recognized by the Fifth Circuit Court of Appeals in *United States v. Carson*, 669 F.2d 216 (5th Cir. 1982). After receiving a discharge in bankruptcy, Carson was convicted under a federal law and ordered by the district court to make restitution to the defrauded bank. The defendant argued that because his debt to the bank had been discharged in bankruptcy, the district court abused its discretion by making restitution a condition of probation. The court rejected this argument and held that a federal court may order restitution as a condition of probation even though the debt which resulted in the conviction was discharged in bankruptcy. In so holding, the court stated:

> If the principal aim of the probation condition were to make the bank whole, this argument might have some appeal. In fact, though, while recompense to the victim is a usually laudable consequence of restitution, the focus of any probation regimen is on the offender. The order of probation is "an authorized mode of mild and ambulatory punishment . . . intended as a reforming discipline." *Korematsu v. United States*, 319 U.S. 432, 435, 63 S.Ct. 1124, 1126, 87 L.Ed. 1497 (1943), *quoting Cooper v.*

United States, 91 F.2d 195, 199 (5th Cir. 1937).

Id. at 217.

In support of their claim that restitution was ordered to provide "compensation for actual pecuniary loss," the plaintiffs relied upon the fact that the restitution ordered was the precise amount of the victim's loss.[14] The plaintiff's reliance is misplaced. The amount of restitution has no bearing on its purpose.

The state court is given discretion under Conn. Gen. Stat. § 53a-30 (a)(4) to order an offender to "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay, or provide in a suitable manner, for the loss or damage caused thereby". The state court could therefore have set the amount of restitution at the amount of the victim's loss or less, depending upon the offender's ability to pay. Moreover, Conn. Gen. Stat. § 53a-30(c) authorizes the court to modify or enlarge the conditions of probation for good cause shown during the period of probation. That statutory scheme reinforces the conclusion that the focus of restitution, as with the other methods of conditional release, is upon the offender and not on the victim, and that restitution is part of the criminal penalty rather than compensation for a victim's actual loss.

In *In re Cox*, 33 B.R. 657, 11 B.C.D. (Bankr. M.D. Ga. 1983) the court considered the dischargeability, under Code § 523(a)(7), of a debtor's obligation to pay the costs of prosecution ordered by the United States District Court. In finding that the costs were nondischargeable under § 523(a)(7), the bankruptcy court stated that "the obligation to pay the costs

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[14] Although the state court ordered restitution in the amount of the victim's $15,960.00 loss, the manner of payment established by the court ($1,000 initially and $40 per week for five years) would result in the payment of less than that amount.

of prosecution was imposed as a penalty to punish Defendant for his violation of the criminal laws, rather than to compensate Plaintiff for actual pecuniary loss." *Id.* at 662, 11 B.C.D. at 91.

This proceeding, like *Cox*, is distinguishable from cases where a creditor or a prosecuting attorney initiates a criminal action to collect an underlying debt. *See, e.g., In re Alan I. W. Frank Corp.*, 19 B.R. 41 (Bankr. E. D. Pa. 1982); *In re Strassmann*, 18 B.R. 346 (Bankr. E.D. Pa. 1982); *In re Whitker*, 16 B.R. 917 (Bankr. M.D. Tenn. 1982); *In re Taylor*, 16 B.R. 323 (Bankr. D. Md. 1981). No persuasive evidence was offered to demonstrate that the state prosecuted Pellegrino for any reason other than to obtain a conviction for the violation of the state's penal code. As the court stated in *In re Holder*, 26 B.R. 789, 791 (Bankr. M.D. Tenn. 1982):

> [A] federal court's power to interfere with state criminal proceedings is narrowly circumscribed and such interference is only justified when the evidence clearly and convincingly reflects that the criminal proceeding is primarily intended to collect a civil debt in contravention of either the automatic stay or discharge provisions of the Bankruptcy Code.

The facts here are also distinguishable from instances where a state agency attempts to enforce a statute directed at a debtor's financial obligations rather than the state's health and public safety concerns such as, for example, where a state agency attempts to enforce its motor vehicle financial responsibility law against a Chapter 7 debtor. *See In re Sampson*, 17 B.R. 528, 8 B.C.D. 992 (Bankr. D. Conn. 1982).

As earlier observed, federal courts should use restraint when their decisions might interfere with traditional state functions. There is no more appropriate application of that policy than in the area of criminal law where states have a primary responsibility to promote the safety and welfare of

their citizens through the enforcement of their criminal statutes. This policy, which extends to noninterference with state criminal proceedings, is endorsed by the Bankruptcy Reform Act of 1978 and its legislative history and, in this proceeding supports the conclusion that the restitution order, as part of a criminal action against Pellegrino, is excepted from discharge under Code § 523(a)(7). It would be incongruous that the drafters of the Bankruptcy Code, mindful of the wisdom of noninterference with criminal prosecutions, would limit, under Code § 362(b)(1), the scope of the automatic stay to allow the continuation of criminal proceedings against a debtor and then provide for the discharge of restitution, one of the sanctions made available to the criminal court by the state legislature.

Having considered the pleadings, the relevant evidence, the arguments of counsel and congressional intent, this court of equity will not read the Bankruptcy Code as permitting Pellegrino to escape the consequences of her crime. Justice is the end result when the rule of law is interpreted with common sense, reason and simple fairness. Here a convicted felon and her husband, who wished to save her from incarceration, pleaded for lieniency in the state court. She was spared the penalty of incarceration on the condition that restitution would be made. The plaintiffs now come to this court to repudiate that obligation, claiming that the Bankruptcy Code provides that relief. It does not. It is a distortion of bankruptcy law and policy to view Code § 523(a)(7) as a shield to restitution obligations in the context of this proceeding. As the court in *In re C. H. Stuart, Inc.*, 12 B.R. 85, 86 (Bankr. W.D.N.Y. 1981) noted, "A thief cannot escape criminal sanctions by filing bankruptcy and listing his victim on his schedule of unsecured creditors." The bankruptcy laws were not enacted and must not be interpreted to provide a refuge to criminals. The plaintiffs bargained in state court for Pellegrino's freedom. This court will not permit them to escape the full obligations of that bargain.

III.

ORDER

For the foregoing reasons, the obligations created by the October 29, 1982 state court restitution order are not discharged, therefore the plaintiffs are not entitled to the injunctive relief, damages, costs, attorney's fees and the other relief claimed in their amended complaint and judgment may enter accordingly.

Dated at Bridgeport, this 25th day of July, 1984.

(Sig.)

Alan H. W. Shiff
United States Bankruptcy Judge

It is SO ORDERED.

Dated at Bridgeport, this 26th Day of July, 1984.

(sig.)
T. F. Gilroy Daly
Chief Judge, United States District Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re
CAROLYN ROBINSON,

Debtor

Chapter 7
Case No. 5-81-00114

CAROLYN ROBINSON,

Plaintiff

v.

DIRECTOR, OFFICE OF ADULT PROBATION;
AUSTIN J. MCGUIGAN, CHIEF STATE'S ATTORNEY, DIVISION OF CRIMINAL JUSTICE OF THE JUDICIAL DEPARTMENT;
COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE;
COMMISSIONER DEPARTMENT OF ADMINISTRATIVE SERVICES,

Defendants

Adv. No. 5-84-0063

JUDGMENT

This action having come on for hearing before the United States Bankruptcy Court for the District of Connecticut at Bridgeport, and the issues having been duly heard and a decision having been duly rendered, it is

ORDERED AND ADJUDGED that the obligations created by the November 14, 1980 state court restitution order were not discharged and that the plaintiff is not entitled to injunctive relief, damages, costs, attorney's fees and other relief claimed in her complaint.

Dated at Bridgeport, this 4th day of September, 1984.

(Sig.)

T. F. Gilroy Daly
Chief Judge, United States District Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1002—August Term, 1984

(Argued April 11, 1985 Decided October 29, 1985)

Docket No. 84-5077

IN RE: CAROLYN ROBINSON,

Debtor.

CAROLYN ROBINSON,

Plaintiff-Appellant,

—v.—

AUSTIN J. MCGUIGAN, CHIEF STATE'S ATTORNEY, DIVISION OF CRIMINAL JUSTICE, JUDICIAL DEPARTMENT; DIRECTOR, OFFICE OF ADULT PROBATION; COMMISSIONER, DEPARTMENT OF INCOME MAINTENANCE; and COMMISSIONER, DEPARTMENT OF ADMINISTRATIVE SERVICES, BUREAU OF COLLECTION SERVICES,

Defendants-Appellees.

6545

Before:

MANSFIELD, KEARSE, and PRATT,
Circuit Judges.

Appeal from a judgment of the United States District Court for the District of Connecticut, T.F. Gilroy Daly, *Chief Judge*, declaring plaintiff's obligation to make criminal restitution payments, imposed on her as a condition of the probation to which she was sentenced upon her conviction for larceny, not discharged by the discharge granted her in a subsequent Chapter 7 bankruptcy proceeding. *See* 45 B.R. 423 (Bankr. D. Conn. 1984).

Reversed and remanded.

Judge Mansfield concurs in a separate opinion.

FRANCIS X. DINEEN, New Haven, Connecticut (Joanne S. Faulkner, New Haven, Connecticut, on the brief), *for Plaintiff-Appellant*.

CARL SCHUMAN, Assistant State's Attorney, Wallingford, Connecticut (Austin J. McGuigan, Chief State's Attorney, Wallingford, Connecticut, Edward F. Reynolds, Jr., Assistant Attorney General, Hartford, Connecticut, on the brief), *for Defendants-Appellants*.

KEARSE, *Circuit Judge*:

Plaintiff Carolyn Robinson, convicted of larceny in state court and ordered, as a condition of the probation to which she was sentenced, to repay the amount wrongfully received to the Connecticut Office of Adult Probation ("COAP"), appeals from a judgment of the United States District Court for the District of Connecticut, T.F. Gilroy Daly, *Chief Judge*, declaring that her obligation to make the criminal restitution payments to COAP was not discharged by the order of discharge granted Robinson in her subsequent bankruptcy proceeding under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701-766 (1982). The court ruled that criminal restitution obligations are not "debts" within the meaning of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (1982), and that, even if such obligations are debts, they are "penalties" excepted from discharge by § 523(a)(7) of the Code, 11 U.S.C. § 523(a)(7). For the reasons below, we disagree with the court's interpretations of the Code, and we reverse and remand.

I. BACKGROUND

The material facts are not in dispute. In 1980, Robinson was convicted of larceny in the second degree for wrongfully receiving $9,932.95 in Public Assistance benefits from the Connecticut Department of Income Maintenance ("CDIM") while simultaneously receiving Social Security benefits. On November 14, 1980, she was sentenced by the Connecticut Superior Court to, *inter alia*, a five-year term of probation; as one of the conditions of that probation, the Connecticut court ordered Robinson to make restitution of the Public Assistance benefits wrongfully received by paying $9,932.95 to the predeces-

sor of COAP (also referred to hereinafter as "COAP"), in monthly installments of $100 beginning January 16, 1981. Robinson complied through May 4, 1981, making payments totaling $450.

On February 5, 1981, Robinson filed a voluntary petition under Chapter 7 in the United States Bankruptcy Court for the District of Connecticut. Part of that petition was a schedule of creditors which listed, *inter alios*, CDIM as having a claim of $6,000 for "public assistance" and COAP as having a claim of $9,932.95 for "restitution." On February 20, 1981, the bankruptcy court notified both COAP and CDIM of Robinson's Chapter 7 petition, and informed them that April 27, 1981, was the last day for the filing of objections to discharge and "complaints to determine the dischargeability of any debt pursuant to 11 U.S.C. section 523(c)." Neither COAP nor CDIM filed a proof of claim, or an objection to discharge, or a complaint to determine the dischargeability of its claim. On May 14, 1981, the bankruptcy court issued an order (the "Discharge Order") discharging Robinson "from all dischargeable debts," declaring "null and void" all existing or future judgments that purported to hold Robinson personally liable with respect to any such dischargeable debts, and enjoining all creditors whose debts were thereby discharged from thereafter endeavoring to collect such debts.

On May 20, 1981, Robinson's attorney wrote COAP, stating that the Discharge Order discharged Robinson's obligation to make restitution payments to COAP and that Robinson had been advised by the attorney that she need make no further restitution payments. The letter urged COAP, if it disagreed with the view that Robinson's obligation had been discharged, to contact the attorney

immediately. COAP apparently did not respond, and Robinson ceased making restitution payments.

Nearly three years later, in February 1984, COAP informed Robinson that its policy was "that the condition of probation concerning restitution is valid and not dischargeable," that it "intend[ed] to enforce the [restitution] order to the fullest extent possible," and that it was requesting that Robinson resume payment. Robinson responded by filing the present adversary proceeding in bankruptcy court against COAP, CDIM, and other state officials, seeking a judgment, *inter alia*, declaring that the Discharge Order had discharged her restitution obligations to COAP and CDIM, enjoining defendants from taking any steps to obtain further restitution payments, and awarding her compensatory and punitive damages and attorney's fees. Robinson moved for preliminary injunctive relief against defendants' taking steps to enforce payment, revoke probation, or report a violation of probation.

Following a brief trial on the merits, the bankruptcy court, Alan H.W. Shiff, *Judge*, entered a brief Memorandum and Proposed Order, reported at 45 B.R. 423 (Bankr. D. Conn. 1984), denying all of the relief sought by Robinson. The court concluded that

> [t]he State court's order that the plaintiff make restitution to the State of Connecticut of $9,932.95 as a condition of probation following the plaintiff's larceny conviction did not create a "debt" as defined in Code § 101(11). Therefore the plaintiff's obligation to pay restitution was unaffected by this court's May 14, 1981 discharge order.
>
> Assuming *arguendo* that the state court's order of restitution did create a "debt" within the purview of

the Bankruptcy Code, such a debt is a "penalty" and therefore excepted from discharge under § 523(a)(7).

Id. at 424-25 (footnotes omitted). The court based its ruling on its prior, more fully explicated, decision in *In re Pellegrino*, 42 B.R. 129 (Bankr. D. Conn. 1984), which the court viewed as virtually identical to the present case. The bankruptcy court's proposed order was adopted by the district court, and judgment was entered in favor of the defendants, declaring that Robinson's restitution obligation had not been discharged by the Discharge Order and denying her any other relief.

On this appeal, Robinson contends that her restitution obligation was a debt within the meaning of § 101(11) of the Code, 11 U.S.C. § 101(11), that it was not excepted from discharge by any of the exceptions set forth in 11 U.S.C. § 523, and that it was, therefore, under 11 U.S.C. § 727, discharged by the Discharge Order. We agree with this interpretation of the Code, and we therefore reverse the district court's judgment and remand for entry of declaratory and injunctive relief in favor of Robinson, and for further proceedings on her claims for other relief.

II. DISCUSSION

Chapter 7 of the Bankruptcy Code allows an individual debtor who meets certain criteria, not in issue here, to obtain a discharge in bankruptcy which, "[e]xcept as provided in section 523 of [the Code], . . . discharges the debtor from all debts that arose before the date of the order for relief under this chapter [here, the date of the filing of the voluntary petition, *see* 11 U.S.C. § 301 (1982)] . . . ." 11 U.S.C. § 727(b). The effect of a discharge is to

> (1) void[ ] any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 . . . ; [and to]
>
> (2) operate[ ] as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor . . . .

11 U.S.C. § 524(a).

The applicability of §§ 727(b) and 524(a) to Robinson depends, first, on whether her obligation to make restitution to COAP is properly construed as a "debt" within the meaning of those sections, and, second, if it is such a "debt," on whether any provision of § 523 makes that debt nondischargeable.

A. *The Restitution Obligation as a Debt*

"Debt" is defined in the Code as "liability on a claim." 11 U.S.C. § 101(11). A "claim" is defined as a

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured . . . .

11 U.S.C. § 101(4). Focusing on the "right to payment" part of the definition, we see that a debt, within the

meaning of the Code, is a liability as to which someone has a right of payment.

In ruling that Robinson's criminal restitution obligation was not a debt, the bankruptcy court adopted the opinion in *In re Pellegrino*, 42 B.R. 129, in which the court had concluded that a similar obligation was not a debt for two reasons. First, the *Pellegrino* court concluded, as a matter of statutory interpretation, that the obligation to make criminal restitution was not within the Code's definition of debt because the victim of the crime had no right to payment: "Under the [Connecticut] penal code, a victim cannot enforce a court's order of restitution if the criminal defendant fails to make payments to [COAP]." *Id.* at 132. Second, the *Pellegrino* court ruled as a matter of policy that criminal restitution obligations should not be construed as falling within the Code's definition of debts because " '[t]he bankruptcy laws are not a haven for criminal offenders, but are designed to give relief from financial over-extension.' " *Id.* at 134 (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. ("House Report") 342, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6299). The court reasoned that

> it would defy both logic and reason to allow a convicted person, who has been ordered to make restitution to his victim in lieu of incarceration, to use the Bankruptcy Code to escape the consequences of his crime. The definition of debt must therefore be read in the context of that policy in order to avoid that anomalous result.

In re Pellegrino, 42 B.R. at 134. A majority of the courts that have considered this issue have adopted the same line of reasoning and held a criminal restitution obligation not a debt under the Code. *See, e.g., In re Button*, 8 B.R. 692

(Bankr. W.D.N.Y. 1981); *In re Oslager*, 46 B.R. 58 (Bankr. M.D. Pa. 1985); *In re Vik*, 45 B.R. 64 (Bankr. N.D. Iowa 1984); *In re Cornell*, 44 B.R. 528 (Bankr. D. Conn. 1984); *In re Mead*, 41 B.R. 838 (Bankr. D. Conn. 1984); *In re Cox*, 33 B.R. 657 (Bankr. M.D. Ga. 1983); *In re Johnson*, 32 B.R. 614 (Bankr. D. Colo. 1983); *In re Magnifico*, 21 B.R. 800 (Bankr. D. Ariz. 1982).

We disagree with the reasoning and the conclusions of the *Pellegrino* line of cases. First, the literal terms of § 101(4)(A) are sufficiently broad—apparently by congressional design—to define as a debt a restitution obligation as to which *any* person or entity, not just the crime victim, has a right to payment. Since, as we discuss below, COAP has a right to enforce the judgment of restitution, Robinson's restitution obligation falls within the Code's definition of debt. Second, the congressional statement quoted by the *Pellegrino* line of cases to the effect that the bankruptcy laws were not intended to be a haven for criminals is taken out of context, and the injection of that thought into the definition of "debt" ignores other facets of the statutory scheme that give evidence that Congress did not intend to exclude financial obligations arising out of crimes from its definition of debt.

1. *The Breadth of the Definition of "Claim"*

The legislative history of the Code reveals that in enacting § 101(4), Congress sought the "broadest possible definition" of a claim, House Report at 309, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6266, intending that virtually all obligations to pay money be amenable to treatment in bankruptcy proceedings. The present language of § 101(4)(A) first appeared in H.R. 8200, 95th Cong., 1st Sess. § 101(4)(A), 123 Cong. Rec. 35,644,

35,644 (1977). In the report accompanying that bill, the House of Representatives Committee on the Judiciary explained the intent of its new definition of claim as follows:

> H.R. 8200 abolishes the concept of provability in bankruptcy cases. All claims against the debtor, whether or not contingent or unliquidated, will be dealt with in the bankruptcy case. . . . The proposed law will permit a complete settlement of the affairs of a bankrupt debtor, and a complete discharge and fresh start.
>
> . . . .
>
> . . . [Section 101(4)] adopts an even broader definition of claim than is found in the present debtor rehabilitation chapters. . . . By this *broadest possible definition*, and by the use of the term throughout the title 11, . . . the bill contemplates that *all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case*. It permits the broadest possible relief in the bankruptcy court.

House Report at 180, 309 (emphasis added; footnotes omitted), *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6141, 6266. The Senate Report that accompanied S. 2266, *reprinted in Bankruptcy Reform Act of 1978: Hearings on S. 2266 and H.R. 8200 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 3 (1977), a bill with language identical to that of § 101(4)(A), contained an explanation of the new definition of claim identical to that contained in the House Report. *See* S. Rep. No. 989, 95th Cong., 2d Sess. ("Senate Report")

21-22, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5807-08.

Consistent with the congressional intent evinced by the legislative history, courts construing § 101(4) in a variety of contexts not involving restitutionary debts have acknowledged the breadth of the definition of claim, characterizing it as, *inter alia*, "broad," *Ohio v. Kovacs*, 105 S. Ct. 705, 709 (1985); "very broad," *In re M. Frenville Co., Inc.*, 744 F.2d 332, 336 (3d Cir. 1984), *cert. denied*, 105 S. Ct. 911 (1985); "extremely broad[ ]," *In re Kennise Diversified Corp.*, 34 B.R. 237, 244 n.6 (Bankr. S.D.N.Y. 1983); "could not be broader," *In re Thomas*, 12 B.R. 432, 433 (Bankr. S.D. Iowa 1981); "broadest possible," *Kallen v. Litas*, 47 B.R. 977, 982 (N.D. Ill. 1985); *In re Vasu Fabrics, Inc.*, 39 B.R. 513, 517 (Bankr. S.D.N.Y. 1984); *In re Johns-Manville Corp.*, 36 B.R. 743, 754 n.6 (Bankr. S.D.N.Y. 1984); "all-encompassing," *In re Baldwin-United Corp.*, 48 B.R. 901, 903 (Bankr. S.D. Ohio 1985); *In re Barnett*, 42 B.R. 254, 257 (Bankr S.D.N.Y. 1984); and "sufficiently broad to cover any possible obligation," *In re Smith Jones, Inc.*, 26 B.R. 289, 293 (Bankr. D. Minn. 1982).

Nonetheless, as indicated above, the majority of courts that have considered whether an obligation to make criminal restitution is a debt within the meaning of the Code have concluded that it is not. The lone exception, so far as we are aware, is *In re Brown*, 39 B.R. 820 (Bankr. M.D. Tenn. 1984). In *Brown*, the debtor had been placed on probation following his plea of guilty to "driving under the influence" and ordered to pay restitution to a person whose property had been damaged by the debtor's faulty driving. The *Brown* court noted that although the restitution order required the debtor to pay the victim

directly, the victim himself had no right to enforce the restitution obligation and could only urge the district attorney to place pressure on the debtor by threatening the revocation of probation. The court reasoned, however, that since the record established that the restitution order was designed solely to compensate the victim for his damages, and since any civil judgment recovered by the victim to compensate him for those damages would result in a debt that was dischargeable in bankruptcy, the restitution obligation must likewise be construed as a debt within the meaning of the Code. *Id.* at 822-23. The *Brown* court rejected the reasoning of the courts that had ruled that criminal restitution obligations were not debts under the Code, concluding that " '[d]ebt' . . . is not restricted to obligations incurred in consumer or business transactions, but includes *all* obligations [to pay], however[ ] incurred." *Id.* at 822 (emphasis in original).

We agree with the general principle enunciated in *Brown*—although our analysis proceeds along somewhat different lines—and disagree with the majority view that an obligation to make criminal restitution payments is not a debt under the Code unless it is enforceable by the victim of the crime. As we read the language of § 101(4)(A) and the legislative history of its adoption, Congress intended "claim" to encompass any right held by any person or entity to enforce any money obligation of the debtor. Thus, as discussed above, Congress intended the term "claim" to have the broadest possible scope. There appears to be no basis, for example, for any supposition that Congress intended an interpretation of "claim" that would exclude rights to restitution in general from the definition of "claim." Since only "claims" are allowable in bankruptcy, *see* 11 U.S.C. § 502, and only

holders of allowed claims are entitled to distributions from the bankruptcy estate, *see* 11 U.S.C. § 726, such an interpretation would produce the anomalous result that no holder of a right to restitution could participate in the bankruptcy proceeding or receive any distributions of the debtor's assets in liquidation. There is no evidence that Congress intended such a result. Indeed, a judgment ordering restitution of a stated sum was a provable claim under § 57 of the Bankruptcy Act of 1898 ("1898 Act"), 11 U.S.C. § 93 (1976) (repealed); *see id.* § 63, 11 U.S.C. § 103(a) (1976) (repealed) (defining provable debts), and the holder of such a claim would have been entitled under the 1898 Act to participate in the distribution of the debtor's assets. Since Congress intended its definition of "claim" in the Code to expand the class of obligations that would be dischargeable, it is hardly conceivable that it thought that a right to restitution provable under the 1898 Act would now be construed as outside of the Code's broad definition of claim.

Nor do we see any indication that Congress intended some rights to restitution but not others to be within the definition of claim. There is no suggestion in the language of § 101(4) that the definition of claim is limited in terms of the identity of the person or entity who has the right to be paid. Nor do we see any such suggestion in the legislative history. We likewise see no indication in the language or the legislative history that the definition is limited in terms of the provenance of the right to restitution. Rather, it would appear, for example, that whether the right arose from a cause of action for fraud or mistake, or was granted as a condition for the remedy of rescission, or was ordered in the context of criminal probation, if it is a right to payment it is a claim within the meaning of the Code.

Finally, we note that, by giving "claim" the broadest possible definition and defining "debt" in terms of a "claim," Congress also sought to give the term "debt" its broadest possible scope. Thus, the congressional reports accompanying the proposed section that became § 101(11) of the Code, stated that the concepts of debt and claim were "coextensive: a creditor has a 'claim' against a debtor; the debtor owes a 'debt' to the creditor." Senate Report at 23, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5809; House Report at 310, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6267. And we have held that the terms claim and debt are "coterminous." *In re Villarie*, 648 F.2d 810, 812 (2d Cir. 1981); *see also In re Vasu Fabrics, Inc.*, 39 B.R. at 516-17.

In sum, we see no support in the language, the legislative history, or the statutory scheme as a whole for the view adopted by the *Pellegrino* line of cases that unless the victim of the crime has a right of payment, a criminal restitution obligation is not a debt within the meaning of the Code. We think the interpretation that more faithfully reflects Congress's intent is the one we adopt here: that any right to the payment of restitution is a claim within the meaning of the Code; and that if any person or entity has a right to receive a payment of restitution from the bankruptcy debtor, the obligor has a debt within the meaning of the Code.

The court of appeals cases cited to us by defendants in support of their position that a criminal restitution obligation is not a debt within the meaning of the Bankruptcy Code are inapposite. In *United States v. Brown*, 744 F.2d 905 (2d Cir.), *cert. denied*, 105 S. Ct. 599 (1984), a sentence of restitution imposed under 18 U.S.C. §§ 3579 and 3580 (1982) was challenged on the ground that its

imposition by the sentencing court sitting without a jury violated the Seventh Amendment's guarantee of the right to jury trial "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars," U.S. Const. amend. VII. The court's holding that the sentencing hearing was not a "Suit[ ] at common law" for Seventh Amendment purposes provides no insight into whether the restitution order that emerges from such a hearing constitutes a debt within the meaning of the Bankruptcy Code. Nor do *In re Davis*, 691 F.2d 176 (3d Cir. 1982), or *Barnette v. Evans*, 673 F.2d 1250 (11th Cir. 1982), support the proposition that criminal restitution obligations are not debts. Each involved a debtor in a pending bankruptcy proceeding who had not yet had a restitution obligation imposed on him in a pending criminal case. In each, the appellate court simply ruled that the bankruptcy court could not enjoin the state criminal prosecution that might result in a restitution order. In a similar vein, *United States v. Carson*, 669 F.2d 216 (5th Cir. 1982), and *United States v. Alexander*, 743 F.2d 472 (7th Cir. 1984), held that the discharge of a debt in bankruptcy did not prevent the district court from imposing a restitution obligation upon the debtor's subsequent conviction of a crime involving that debt. The latter four decisions merely reflect (1) the courts' analytical distinction between the obligation that arose upon the occurrence of the event and the obligation that would arise upon entry of a criminal restitution order, and (2) the requirement of § 727(b) of the Code that the obligation sought to be discharged as a debt—there the criminal restitution obligation—must have been in existence at the time of the bankruptcy proceeding. These cases do not purport to hold that a restitutionary obligation that was in existence

at the time of the bankruptcy proceeding is not a debt because it is in the nature of criminal restitution.

2. *"A Haven for Criminal Offenders"*

Nor are we persuaded by the reasoning in the *Pellegrino* line of cases that because Congress stated that it did not intend the bankruptcy laws to provide a haven for criminals the Code's definition of "debt" must be read as excluding an obligation to make restitution of unlawfully gained funds. The quotation from the legislative history upon which those cases rely as evidence of Congress' concern in this area is drawn not from Congress' discussion of the definitions of debt and claim, but from a discussion of the automatic stay of pending actions provided for in 11 U.S.C. § 362. The quoted statement is given as an explanation of the exception to that stay, created by § 362(b)(1), for "criminal action[s] or proceeding[s] against the debtor." *See* House Report at 342, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6299; Senate Report at 51, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5837; 2 *Collier on Bankruptcy* ¶ 362.05[1], at 362-38 to 362-39 (L. King 15th ed. 1983). Nowhere in the lawmakers' discussion of the definitions of "debt" and "claim" is there any mention of an intention to restrict those definitions to exclude obligations arising out of criminal activities.

Indeed, the scheme devised by Congress to prevent the bankruptcy laws from providing a haven for criminals reveals that Congress did not intend so to restrict its deliberately broadened definitions of those terms. Thus, one of the methods chosen to deny criminals a bankruptcy ploy was the provision in § 523 of the Code that a "debt . . . for a fine, penalty, or forfeiture payable to

and for the benefit of a governmental unit" (to the extent it is not compensation for actual loss, *see* Part II.B. below) is not dischargeable. 11 U.S.C. § 523(a)(7). But the very provision for such an exclusion makes clear that Congress did not intend to restrict its *definitions* of claim and debt, for, under § 727(b), only "debt[s]" are dischargeable, and § 523 deals only with "debt[s]". If the obligation to pay a criminal fine, penalty, or forfeiture were not within the Code's definition of "debt," presumably § 523 would not refer to it as a debt, and indeed there would be no need for § 523 to state that it is not dischargeable. Since it is thus clear that Congress did not believe that the inclusion of fines, penalties, and forfeitures within the Code's definition of debt would provide an unwarranted haven for criminals, there is no reason to suppose that it sub silentio believed that including a criminal restitution obligation within that definition would give such haven.

Finally, it is plain that Congress was attentive to the possibility that the bankruptcy laws might be invoked by criminals in an effort to retain their unlawful gains, and it enacted both provisions that thwart those efforts and provisions that, despite those efforts, give precedence to the bankruptcy laws' aim to provide relief for financial overextension. Thus, as noted, § 362(b)(1) makes the automatic stay of pending proceedings inapplicable to criminal proceedings against the debtor; § 523(a)(7) makes certain obligations to pay moneys to governmental bodies nondischargeable. On the other hand, as discussed in Part II.B. below, § 523(c) of the Code provides that debts for crimes such as larceny and fraud "shall be discharged" unless the creditor to whom such a debt is owed files an objection with the court and the court

thereafter determines that the debt is excepted from discharge. "If the creditor does not act, the debt is discharged." House Report at 365, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6321.

Thus, Congress drew such lines as it thought appropriate to grant or deny criminals the benefits of the bankrutpcy laws. Where Congress has carefully considered a particular policy and, in a complex and carefully drawn statute, has established a balance between that policy and other competing legislative goals, it is inappropriate for a court, based on its own view as to the relative importance of that policy, to create judicial exceptions to the clear language of the statute that are warranted neither by that language nor by the legislative history. *See Central Trust Co. v. Official Creditors' Committee of Geiger Enterprises, Inc.*, 454 U.S. 354, 357-60 (1982) (per curiam); *Caminetti v. United States*, 242 U.S. 470, 485 (1917). In our view, the courts in *Pellegrino, et al.*, in holding that policy reasons should prevent a criminal restitution obligation from being construed as a debt within the meaning of the Bankruptcy Code, have impermissibly reordered the priorities established by Congress. We decline to join them.

3. *COAP's Right to Payment*

Having concluded that if any entity has a right to payment of a criminal restitution obligation that obligation is a debt within the meaning of the Code, the only remaining question in our analysis of whether or not Robinson's obligation was such a debt is the question of whether COAP has such a right. We conclude that it does.

The Connecticut sentencing court, acting pursuant to Conn. Gen. Stat. Ann. § 53a-30(a)(4) (West Supp. 1981)

(amended in a manner not material to this case by Public Act 82-298, § 8, 1982 Conn. Legis. Serv. 1076, 1080 (West)), ordered Robinson to make restitution of the wrongfully received Public Assistance benefits, and to make the restitutionary payments to COAP. In accordance with the statutory scheme, the amount of the restitution obligation was fixed by the sentencing court, *see* Conn. Gen. Stat. Ann. § 53a-30(a)(4) (West Supp. 1985), and the enforcement of the obligation became the responsibility of both the sentencing court and the state probation officers, *id.* § 53a-32(a) (West 1972); *id.* § 54-108 (West Supp. 1985). Those officers, who are agents of COAP, are authorized to cause any probationer who violates any condition of his probation to be arrested, detained, and brought before the court on charges of probation violation. *Id.* § 53a-32(a) (West 1972). If a violation is established, the court may revoke the sentence of probation and order the probationer incarcerated. *Id.* § 53a-32(b).

Plainly, then, COAP has the right to receive payment from Robinson and the power to seek enforcement of its right. The fact that the amount of money it has the right to receive has been fixed by the court is irrelevant to the existence of the right. Nor is it relevant that the right is enforceable by the threat of revocation of probation and incarceration rather than by the threat of levy and execution on the debtor's property. The right is not the less cognizable because the obligor must suffer loss of freedom rather than loss of property upon failure to pay.

In sum, we conclude that since the judgment creating Robinson's obligation to make restitution to COAP created a concomitant right in COAP to payment of that obligation, Robinson's obligation to make those restitu-

tion payments was a debt within the meaning of the Bankruptcy Code.

B. *The Dischargeability of the Restitution Debt*

The final question is whether Robinson's restitution debt to COAP was dischargeable. Section 523 of the Code, 11 U.S.C. § 523, excludes from discharge several categories of debts that would otherwise be discharged under § 727(b), and three of these categories have arguable relevance to the present case. Section 523(a) provides, in pertinent part, as follows:

> (a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt—
>
> . . . .
>
> (2) for obtaining money, property, services, or an extension, renewal, or refinance of credit, by—
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; or
>
> (B) use of a statement in writing—
>
> (i) that is materially false;
>
> (ii) respecting the debtor's or an insider's financial condition;
>
> (iii) on which the creditor to whom the debtor is liable for obtaining such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with the intent to deceive;

. . . .

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

. . . .

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss . . . .

11 U.S.C. § 523.

While at first glance all three subsections seem to have at least potential applicability to Robinson's debt, only subsection (a)(7) need concern us on this appeal. Although Robinson's obtaining Public Assistance benefits to which she was not entitled may well have occurred as a result of false representations within the meaning of subsection (a)(2), and although she was convicted of larceny, which is covered by subsection (a)(4), the Code does not exclude debts within these subsections from discharge if the creditor does not object to discharge. Thus, § 523(c) of the Code provides that

the debtor shall be discharged from a debt specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owned [*sic*], and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

11 U.S.C. § 523(c). *See* Bankruptcy Rule 409(a) (*reprinted in* 11 U.S.C. app. 217 (1982)); Senate Report at 80, *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5865-66; House Report at 365, *reprinted in* 1978 U.S. Code Cong. & Ad. News, 5963, 6321; 3 *Collier on Bankruptcy* ¶ 523.21 (L. King 15th ed. 1983).

In the present case, the bankruptcy court gave COAP and CDIM notice in February 1981 that their claims were listed in Robinson's petition; that April 27, 1981, was the last day for filing objections to discharge or complaints to determine dischargeability under § 523(c); and that the failure by that date to file a complaint as to the dischargeability of a debt under §§ 523(a)(2) or (4) might result in discharge of the debt. COAP and CDIM did not file such objections or complaints. We suspect that had objection been made on the ground that the debt was for an established larceny, the court would have excepted it from discharge, and the case would not be before us now. COAP and CDIM waived their rights under subsections (a)(2) and (a)(4), however, and we turn, therefore, to their contention that the debt was nondischargeable under subsection (a)(7).

Subsection (a)(7) makes a debt nondischargeable "to the extent" that (1) it is for a "fine, penalty, or forfeiture," (2) it is "payable to and for the benefit of a governmental unit," and (3) it is "not compensation for actual pecuniary loss." 11 U.S.C. § 523(a)(7). There is no question that Robinson's restitution debt is in a sense a penalty for her crime. *See, e.g., United States v. Brown*, 744 F.2d at 909; *United States v. Carson*, 669 F.2d at 217-18; *In re Vik*, 45 B.R. at 67-68; *In re Johnson*, 32 B.R. at 616; *In re Magnifico*, 21 B.R. at 803; *see also* 18 U.S.C. § 3579(a)(1), which empowers a federal court

sentencing a defendant for an offense under title 18 to order the defendant to make restitution "in addition to or in lieu of any *other* penalty" (emphasis added). Nor is there any question that Robinson's debt is payable to and for the benefit of a governmental unit. We do not believe it can be said, however, that the debt is "not," "to [some] extent," "compensation for actual pecuniary loss."

Under the Connecticut probation scheme, the state court is given discretion to order an offender to "make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, *for the loss or damage caused thereby*". Conn. Gen. Stat. Ann. § 53a-30(a)(4) (West Supp. 1985) (emphasis added). Thus, the amount of restitution to be assessed against a defendant, though it may be adjusted to account for his ability to pay, is measured by the fruits of the debtor's offense or by the victim's resulting loss or damage. These criminal restitution payments, though initially paid to COAP, are ultimately remitted to the victim of the defendant's crime. *See In re Mead*, 41 B.R. at 840; *In re Pellegrino*, 42 B.R. at 132. In the present case, the amount of money wrongfully received by Robinson from CDIM was $9,932.95. The amount of restitution that Robinson was ordered to pay was precisely $9,932.95. Thus, defendants admit on this appeal, as they must, that "the restitution [to be paid by Robinson] also had compensatory consequences . . . ." The conclusion is inescapable that Robinson's obligation to make restitution payments to COAP in the exact amount lost by CDIM, which COAP would then remit to CDIM, was designed to be, among other things, compensation for CDIM's actual pecuniary loss.

The fact that Connecticut's probation scheme includes possible conditions of probation that are not compensatory does not detract from the conclusion that criminal restitution, to the extent that it does not exceed the amount of the loss and eventually goes to the victim of the loss, is compensatory. Neither are we persuaded that because the restitutionary condition itself, like other probationary conditions, is intended in part to punish the defendant and to foster his rehabilitation, it may not also be "compensation for actual pecuniary loss" within the meaning of § 523(a)(7). *Cf. United States v. Dudley*, 739 F.2d 175, 177 (4th Cir. 1984) ("[A]n order of restitution, even if in some respects penal, also[ ] has the predominantly compensatory purpose of reducing the adverse impact on the victim."). Certainly nothing in the section or its legislative history suggests that § 523(a)(7) excludes from discharge only debts to governmental units that are *exclusively* compensation for actual pecuniary loss. Such a restrictive interpretation is contraindicated by the very words used to introduce the subsection: the thought that "to the extent" that a debt is of one sort or another different consequences follow means that the draftsmen recognized that the debt itself may fit into more than one category.

We conclude that a debt that has compensation for actual pecuniary loss as at least one of its purposes is not, to the extent that it does not exceed the amount of the loss, excepted from discharge by § 523(a)(7). Given the facts that the Connecticut statutory scheme allows the criminal restitution obligation to be fixed with reference to "the loss or damage caused [by the offense]," that the order here fixed Robinson's debt at precisely the amount she had wrongfully received from CDIM, and that the

restitution payments by Robinson to COAP are forwarded by COAP to CDIM, we conclude that Robinson's debt cannot be classified as one that is "not compensation for actual pecuniary loss." Robinson's debt therefore was not excepted from discharge by § 523(a)(7).

There being no properly invoked provision that prevented the discharge of Robinson's restitution debt, that debt was discharged by the Discharge Order.

C. Relief on Remand

In addition to requesting a judgment declaring that her restitution obligation had been discharged by the Discharge Order, Robinson sought an order enjoining defendants from taking any steps to recover further restitution payments and an order adjudging defendants in contempt of the Discharge Order and the automatic injunction imposed by § 524 of the Code for having attempted to collect restitution payments from her after the entry of the Discharge Order. As noted above, § 524(a)(2) provides that a valid discharge

> operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any . . . debt [discharged under § 727] as a personal liability of the debtor, or from property of the debtor . . . .

Robinson also sought an award of compensatory and punitive damages, costs, and attorney's fees.

Since we have determined that Robinson's restitution debt was discharged by the Discharge Order, that Discharge Order automatically operated as an injunction against defendants' taking any steps to recover further

restitution payments from Robinson. Thus, Robinson's claim for an injunction may be viewed as a request for clarification and particularization of the § 524(a)(2) injunction with respect to her restitution obligation. Given the position taken by COAP and the other defendants in this, and other recent cases, *see In re Cornell*, 44 B.R. 528; *In re Mead*, 41 B.R. 838; *In re Pellegrino*, 42 B.R. 129, we believe that such clarification is warranted to ensure that Robinson is accorded the relief to which the Discharge Order entitled her.

Because defendants have raised various defenses and claims of immunity with respect to Robinson's other claims, none of which has been addressed by the district court, we remand to the district court for consideration of those claims.

CONCLUSION

We reverse the judgment of the district court declaring that Robinson's restitution obligation was not discharged and remand to the district court for (1) an order declaring Robinson's restitution obligation discharged, (2) an order enjoining defendants from taking any steps to recover further restitution payments, and (3) further proceedings not inconsistent with this opinion.

MANSFIELD, *Circuit Judge* (Concurring):

I concur in Judge Kearse's thorough and carefully considered opinion. At the same time I cannot refrain from expressing concern at the unfortunate result compelled by the language of the relevant provisions of the

Bankruptcy Code. The effect in many instances will be to stultify and render useless criminal restitution payments as a means of punishing persons convicted of felonies involving theft or fraudulent procurement of money or property, in this case wrongfully obtaining $9,932.95 in Public Assistance benefits. The convicted criminal will simply use bankruptcy to escape the obligation to make criminal restitution payments ordered by the court. The court will accordingly be forced to impose punishment in the form of a "fine, penalty or forfeiture payable to and for the benefit of a governmental unit" in order to render the obligation non-dischargeable under 11 U.S.C. § 523(a)(7). I see no valid reason for requiring the recipient of criminal restitution payments as a creditor to file objections under 11 U.S.C. § 523(c) to the convicted criminal's being discharged from the obligation to make criminal restitution payments ordered by the court when he or she is not required to do so in order to prevent discharge of the criminal's obligation to pay a fine, penalty or forfeiture.

For these reasons I hope that Congress will remedy this unfortunate loophole by amending 11 U.S.C. § 523(a)(7) to make criminal restitution payments non-dischargeable in bankruptcy.